

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON FISH, WILDLIFE AND PARKS

Call to Order: By **CHAIRMAN DANIEL FUCHS**, on January 30, 2001 at
3 P.M., in Room 152 Capitol.

ROLL CALL

Members Present:

Rep. Daniel Fuchs, Chairman (R)
Rep. Joe Balyeat, Vice Chairman (R)
Rep. George Golie, Vice Chairman (D)
Rep. Keith Bales (R)
Rep. Debby Barrett (R)
Rep. Paul Clark (D)
Rep. Ronald Devlin (R)
Rep. Tom Facey (D)
Rep. Nancy Fritz (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Larry Jent (D)
Rep. Jeff Laszloffy (R)
Rep. Diane Rice (R)
Rep. Rick Ripley (R)
Rep. Allen Rome (R)
Rep. Jim Shockley (R)
Rep. Donald Steinbeisser (R)
Rep. Bill Thomas (R)
Rep. Brett Tramelli (D)

Members Excused: None.

Members Absent: None.

Staff Present: Linda Keim, Committee Secretary
Doug Sternberg, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 365, 1/29/2001; HB 282,
1/29/2001
Executive Action: HB 365

HEARING ON HB 365

Sponsor: REPRESENTATIVE JAMES G. WHITAKER, HD 41, SE
CASCADE COUNTY

Proponents: SENATOR CHRIS CHRISTIAENS, HD 23, CASCADE
Dan Zieske, Student, Holy Spirit Catholic School
Kellie O'Rourke, " " " " "
Alexa Mitchell, " " " " "
Ryan Soria, " " " " "
Marissa Nardinger, " " " " "
Kevin Simmons, " " " " "
Mary Olson, Montana Federation of Garden Clubs
Jean Thomas, Montana Federation of Garden Clubs

Opponents: None

Opening Statement by Sponsor:

REPRESENTATIVE JAMES WHITAKER, HD 41, SE CASCADE COUNTY stated he is introducing HB 365 as an act designating the Mourning Cloak as the official state butterfly. The fifth graders from Holy Spirit Catholic School are here to testify in support of this Bill.

Proponents' Testimony:

SENATOR CHRIS CHRISTIAENS, HD 23, CASCADE COUNTY distributes pictures of the Mourning Cloak Butterfly **EXHIBIT(fih24a01)**, which they hope to designate as the official state butterfly. This Bill is being supported by the Garden Clubs of Montana and has become a school project across the state with young people doing research to determine their usefulness in our communities and home gardens. The children's testimony will more than convince you to vote in favor of this Bill.

Dan Zieske, student from Holy Spirit Catholic School in Great Falls said the National Council of State Garden Clubs has asked each state to choose a State insect to encourage us to recognize the importance of insects in the ecology of the world. Large corporations have provided funds to help promote the study of insects and help school children plant gardens and clean up areas that are a natural habitat. Currently 19 states have chosen to pick a butterfly; other states have picked honeybees or ladybugs.

Kelli O'Rourke, Student from Holy Spirit Catholic School in Great Falls said they designated the Mourning Cloak Butterfly as the official butterfly for the State of Montana. They chose this butterfly because it has been sighted in every county in Montana.

It is easy to identify because its colors are iridescent blue, bright yellow, black and purple. Mourning Cloaks prefer to eat tree sap, rotting fruit and flower nectar, and may be our longest living butterfly.

Alexa Mitchell, Student from Holy Spirit Catholic School in Great Falls said they had many discussions why we would want a state butterfly. They think it is a beautiful symbol that would add color and beauty to our state advertising pamphlets. A butterfly represents freedom and nature; values that Montanans share.

EXHIBIT (fih24a02)

Ryan Soria, Student from Holy Spirit Catholic School in Great Falls said butterflies add to the ecology and economy of Montana. Butterflies pollinate better than bees, which means that more flowers and grains will grow. Without the life cycle of the caterpillar, plants would not be pollinated and would not produce fruit. We need to learn to let insects do their work and not be so anxious to destroy them.

Marissa Nardinger, Student from Holy Spirit Catholic School in Great Falls explained the symbolism in the four colors of the Mourning Cloak Butterfly. Purple could represent mountains, flowers, sunsets and dusk. Yellow for sunrises, ripened grain fields, sunflowers, and native grasses. Blue symbolizes our big sky, our pure streams, huckleberries and sapphires. Black represents the rich soil, coal fields and black bears.

Kevin Simmons, Student from Holy Spirit Catholic School in Great Falls said that although the naming of a State Butterfly may seem relatively minor compared to many issues in the legislature, we need to continue to respect and promote all the wonderful creatures in our environment. His classmates and he felt this would not add unneeded cost to the state since advertising is constantly changing its promotions and reprinting maps and pamphlets, so including another symbol would be minor.

EXHIBIT (fih24a03)

Mary Olson, Montana Federation of Garden Clubs said they have using and doing things with butterflies for several years in Montana. The national organization is very much for it. Their garden club junior gardeners use a Gardening for Kids booklet which contains things to do with butterflies. A Havre garden club member teaches special education and has put together things to do with butterflies. Also, each year they do a butterfly and moth survey with a local Livingston resident, Ron Lange.

Jean Thomas, Montana Federation of Garden Clubs, told a symbolic story about the butterflies that were discovered scratched on the

walls of the children's barracks in the concentration camps of WW II. She also stated that therapy has been done with children when a parent was found to be terminally ill, and a butterfly is usually found in their painting. She said the symbolism may be that a creation of beauty comes from the chrysalis.

EXHIBIT (fih24a04)

Questions from Committee Members and Responses:

CHAIRMAN FUCHS asked what the caterpillar looks like. **Jean Thomas** answered, The caterpillar hosts are willows, including black willow, weeping willow; also American elm, cottonwood, aspen, paper birch, and hackberry. Older caterpillars wander about and may be found on plants that they do not eat.

EXHIBIT (fih24a05)

Closing by Sponsor:

REPRESENTATIVE WHITAKER urged a DO PASS on this Bill and thanked the committee for their indulgence.

EXECUTIVE ACTION ON HB 365

Motion/Vote: REP. GALLUS moved that HB 365 DO PASS. Motion carried unanimously.

HEARING ON HB 282

Sponsor: REPRESENTATIVE JEFF LASZLOFFY, HD 22, LAUREL

Proponents: Gary Marbut, Montana Shooting Sports Association
Pam Bucy, Assistant Attorney General
Russ Whitcomb, Detective, Helena Police Department
Brett Lund, Detective, Billings Police Department
Mark Riedl, representing himself
Rex Dennis, representing himself
Duane Spethman, representing himself
David Brown, representing himself
Toby Day, Montana Wildlife Federation
Mike Fellows, Montana Libertarian Party
Allen Schallenberger, representing himself
James Verbanac, representing himself

Opponents: Sharon Hoff Brodowy, Montana Catholic Conference
Betty Whiting, Montana Association of Churches

Informational Witnesses: Mary Ann Wellbank, Child Support
Enforcement Division in the

**Department of Public Health and
Human Services**

Opening Statement by Sponsor:

REPRESENTATIVE JEFF LASZLOFFY, HD 22, LAUREL, said the purpose of HB 282 is to repeal the requirement to put Social Security Numbers (SS#) on hunting and fishing licenses. SB 374 was passed in 1997 in response to a federal effort to locate parents who weren't paying child support. He supports this effort and thinks it is necessary. The Federal Government required that we put SS# on all applications for professional, occupational, drivers, marriage and recreational licenses. If we refused, they threatened to withhold funding for state child support and temporary assistance to needy families. In Montana, this could mean \$113 million over the biennium. This law had potential unintended consequences. Criminals are now using the internet to commit identity theft. This is where a thief gets hold of a victim's name, birth date and SS# and uses them to get things like credit cards or auto loans in the victim's name. They can also get counterfeit checks or debit cards and use them to drain the victim's account. They use a false address, so the victim doesn't even get the monthly statements. The first time many people know their identity has been stolen is when they are tracked down and contacted by a collection agency. Trans Union, one of the nation's largest credit agencies said that calls to their fraud hotline numbered 35,000 in 1992 and had risen to 500,000 just five years later. The intent behind the original legislation is good, however the system as implemented puts the people who buy a conservation license in Montana at the risk of becoming victims. The law requires that all conservation holders, regardless of their age are required to give their social security numbers. But, how many 12 year old kids are behind in their support payments? The federal government now recognizes the risks. Efforts in Congress like HR 4587, the Social Security Number Privacy and Identity Theft Act would make it illegal for a business to withhold service from anyone who refuses to give out their social security number. Non-payment of child support is a real problem, and so is identity theft. We already have the one problem, we shouldn't put another half million people at risk by requiring SS# on conservation licenses.

Proponents' Testimony:

Gary Marbut, Montana Shooting Sports Association, and the Western Montana Fish and Game Association states they did I 141 last summer but did not get enough signatures to put it on the ballot. Also tried to solve the problem with a special session. They

echo the concerns about the identity theft problem. There is a need to realize the problems and deal with privacy in a significant way. It appears the previous legislature was willing to sell some of our rights for some federal dollars, and we wonder what other rights may be for sale. Have a chance to begin to correct that with this bill. SB 262 and HB 388 also address this problem; however, both are contingent on getting an exemption from the federal government. We see that as a long shot, not likely to generate much relief for sportsmen. There are several things that can be done to improve this Bill.

REPRESENTATIVE GOLIE'S Bill, HB 388 has a good enforcement section, it says there are penalties that the public employee will receive if they illegally give out someone's SS#. We think it would be good to put that penalty section in this bill. Another would be with a contingency statement stating that if the State of Montana is not able to obtain exemption from the federal government within six months, then this Bill would take effect and it would wipe the SS# off the hunting and fishing licenses. This would give the Department of Health and Human Services time to work on the exemption.

Pam Bucy, Assistant Attorney General, here on behalf of Attorney General Mike McGrath and the Department of Justice. They support HB 282 because identity theft has come to the attention of both prosecutors and law enforcement officers across the state. No one is immune from this crime and it is the fastest growing crime in the nation. The Department of Justice has proposed legislation to create the offense of identity theft, and they have a hearing on that Thursday. They believe this statute is consistent with that legislation and with department policy in the motor vehicle division, where they no longer require the use of SS#s on drivers licenses. Urges that this legislation pass.

Russ Whitcomb, Detective with City of Helena Police Department who investigates white collar crime, states there have been a substantial number of identity thefts in the community, and he has investigated a large number of them. All began with the theft of a social security number. The Federal Trade Commission has a website with a place to list complaints. Last year there were 80,000 complaints on that website; 23% dealt with a SS# being stolen. Last year there were 500,000 victims in the United States. This translates into a loss of over \$745 million. The first thing criminals look for is the SS#. Believes that the circumstances and consequences of identity theft outweigh the other factors that are involved.

Brett Lund, Detective with Billings Police Department states he also specializes in white collar fraud crimes. One of the most common forms of identity the criminal looks for is the SS#. In

the City of Billings there is a policy requiring all merchants to write down the driver's license number on every check involved in a transaction or service. In many cases, that is the social security number. We track a lot of the criminal activities involved in fraud crimes based on the SS#. This happens all over Montana, on a daily basis. What we see the criminal element obtaining is someone's name, date of birth, and SS#. We would like to see the SS# excluded from anything that will be made available to the general public.

Mark Riedl, licensed private investigator representing himself

said he is very concerned about the Billings Gazette's capability in May 2000 of obtaining 350,000 Montana Conservation Licenses on a CD from FWP. His information was on that CD and is concerned where it went. What safe guards are being taken now to prevent this information being disseminated and to keep social security numbers private? There is quite a list of things we can do as a private investigator by only knowing your SS#. We can tell just about anything; i.e where you live, where your kids are, where you went to school, what professional licenses you have, nearly anything. Think of your SS# as being as sensitive as your bank PIN number. Asks for support on HB 282.

Rex Dennis, representing himself gives personal testimony regarding an incident in November 1999 where he received a call from a bank in Detroit telling him that someone from Fort Lauderdale FL got hold of his SS #. The caller told him they had opened an account at the caller's bank and charged \$15,000. They said he should check into this by calling the three major credit reporting agencies. When he called he was told they had gone to Boston, Atlanta and Denver, in addition to Detroit. Was told that a ring of people on the internet access whatever databases are available to get SS#s. Since that time he has had to call the credit agencies periodically and check. Recently someone from New Hampshire had tried to access his information. There were six instances where credit was turned down, but at least three where credit was extended. It took 6-8 months of hassling with banks, guaranteeing his signature and where he has lived to straighten this out. Strongly recommends a pass on HB 282.

Duane Spethman, representing himself, stated one year ago he became aware of the social security number requirement, and called many state agencies to express his disapproval. During the election he collected signatures for CI 141. Concluded the legislature sold Montana citizens to the federal government when they required social security numbers on everything, and started using it as a national ID number. The reason we are being manipulated for every person, every activity is because the taxing structure will change to electronic money and they need to have a number to track to make the system work. Re-read George

Orwell's book, **1984**, which was written in 1948. Everything in his book is in place now, including the lottery. Big brother is everywhere and this is just part of it. Need to focus on this problem or all Montanans will suffer.

David Brown, representing himself, stated his problem is his grand kids want him to go fishing with them. But he doesn't want to give out his SS# to get a license. Doesn't have it on his driver's license and hasn't had a Social Security card since he was 17 when he memorized the number. Concerned that FWP wants the number. Everyone who files a tax return has to give the number to the Montana Revenue Department; why can't they supply the number to the welfare people? Wants to go fishing, but doesn't want to break the law. It bothers him knowing many people are exposing themselves to identity theft. Please pass HB 282.

Toby Day, Montana Wildlife Federation, states they realize hunting and fishing tags can be bought at local stores, and are not bought at FWP, where it would be safer. Doesn't have a problem giving out identification, but there should be a way to encode the drivers licenses to get back to the SS#, because you are already giving out your driver's license number. Feels that would at least be a step in the right direction.

Mike Fellows, Montana Libertarian Party, stated they support HB 282. His testimony is contained in **EXHIBIT(fih24a06)**.

Allen Schallenberger, representing himself, stated his concerns in **EXHIBIT(fih24a07)** and pointed out that other states, such as Colorado have resisted the federal government's intrusion into privacy and did not lose their federal funding, nor did their children starve. The SS# is not required on FWP Licenses in Colorado.

James Verbanac, representing himself, states our rights are being put up for sale. For the first time in 28 years, did not hunt or fish last year because of the SS# requirement. Driver's licenses give us a choice, and chose not to put SS# on his. There should be an option on hunting/fishing licenses to do the same. Part of the fourth amendment says; the right of the people to be secure in their person against unreasonable searches. Said he is not a deadbeat Dad or Mom, and this is a search for no cause. Urges support of HB 282.

Opponents' Testimony:

Sharon Hoff Brodowy, Montana Catholic Conference, stated the US Government in its infinite wisdom uses SS# to identify people. She, too, is concerned about putting SS# on hunting and fishing

licenses; hasn't used on driver's license as it is not required. In the 1970's, the government decided that all pilot's licenses would be based on SS#; but if they requested to use another number, they could have another number. It caused the same sort of uproar as this is. The concern of the Montana Catholic Conference is the welfare money. The fiscal note shows the millions of dollars that will be lost. There has to be a way, according to the Personal Responsibility and Work Opportunity Act to track the non-custodial parent who is not paying their child support. The way to fix it is not to eliminate it and jeopardize that money, need to continue to push the Federal Government to make a change. Kids are highly at risk if we lose these Federal dollars coming into the state. Senator Wells' Bill, SB 262 has a contingency clause which gives us some time to get waivers. The department has been trying to get waivers for years. On the state web page on the internet, there are 149 pages of people who are in arrears in their child support payments. Millions of dollars are owed. Need to be holding parents accountable somehow, and this is not the way to do it. Urges everyone come together and find a workable solution, but please don't jeopardize the dollars that are helping low income families.

Betty Whiting, Montana Association of Churches, said it includes the American Baptist, Christian, Episcopalian, Roman Catholic, Presbyterian, United Church of Christ and the Methodist Church. Concerned about the children in the state. Every fourth child in the state is living in poverty. This Bill would remove from these children the opportunity to retain or get their court ordered checks from the non-custodial parent. The children have rights, just as the hunters have rights. You have to weigh in your mind which is most important. Have one fourth of the hunters and fishermen had their identity stolen? It seemed that a lot of them were stolen even before this law went into effect. It is a problem, but not a problem because of having numbers put on hunting licenses. The policeman who reported said most of his came from check IDs, where you put your SS# on your check before it can be used as payment. Not just a Montana problem, this is a national law where everybody in the United States has been asked to use their SS#s. Knows that hunters and fisherman want to do what is right, and thinks there are ways out of this. There is legislation in line for it. Encourage you to defeat this Bill and look for other Bills that are attempting to find ways that will still bring those dollars into the state.

Informational Witnesses:

Mary Ann Wellback, Child Support Enforcement Division in the Department of Public Health and Human Services states child support agencies need SS# in order to firmly identify that they

are pursuing the right person. When interfacing with other agencies to try to locate a person, they confirm an absolute match by using person's name and SS#. In Montana \$180 million of debt is owed to children and families. There are 38,000 families in our division depending on our support. If not in compliance, Federal Government would remove all child support funding which amounts to \$13 million per year for the Child Support Enforcement Division, which is 66% federally funded and 34% state special revenue. As a condition of the temporary assistance to needy families which is known in Montana as the Families Achieving Independence in Montana (FAIM) Program, the public assistance program, their plan is contingent upon the state having a compliant child support plan. If nothing complies, they lose their money too, about \$44 million per year. Total fiscal note of \$113 million at risk. States they realize this has been an issue and have no desire to pit sportsmen against families, its just the way the Federal Government came down. The Federal Government does allow states to request exemptions, and they are extremely stringent. Exemptions requested in Montana on 8/31/2000 1) exempt all youths under 16; 2) exempt all Montana people who provide their driver's license number, (which is no longer the SS#), 3) exempt all out of state residents who do the same. Believe will get exempted for youth under 16 for a three year approval period. The other two may not be passed. If it is true that there are bills going in Congress concerning identity theft, some have been sitting there for several years to remove this requirement from hunting and fishing license applications, and they haven't moved. **SENATOR WELLS'** Bill and **REPRESENTATIVE GOLIE'S** Bill both have contingencies that the Montana Law would go away if the laws were repealed at the federal level. Governor Martz testified in favor of **SENATOR WELLS'** Bill and she supports Montana continuing to pursue exemptions and continuing to work with the Congressional delegation. Information is available on what other states are doing, if there are questions. In 1997 when Legislature was having difficulty with the forerunner to these requirements, established interim committee to study the impact on Montana if we refuse federal funding for the child support and public assistance programs. As result of the study, the interim committee said Montana can't do without this federal funding as too many people depend upon it.

Questions from Committee Members and Responses:

REPRESENTATIVE RICE said she read an article where a Secretary of State sued the Federal Government. Are you aware of which state it was? **Mary Ann Wellbank** answered, it was the Secretary of State in Michigan who objected to the requirement of having SS# on drivers license applications. Michigan sought an exemption

from it and it was denied. The law is in place now, and both the Executive Branch and the department support it.

REPRESENTATIVE BALLYEAT asked if it was stated during testimony that SB 362 and HB 388 are similar Bills. Did you state that getting an exemption was a long shot? **Gary Marbut** stated yes, especially an exemption that would affect hunters and fishermen in general. It is more likely for youth. **REPRESENTATIVE BALLYEAT** said, a few months ago you said you knew of several states who were not complying with this requirement to put SS# on hunting licenses, but were still receiving federal funds. Has that changed? **Gary Marbut**, said, not sure of the current statu. Has been told by the administration that all not giving SS# have been able to obtain the required exemptions in one way or another. Stated that New Mexico got the exemption, but it was fueled by the legislators refusing to put SS# on licenses. There are a number of states not giving SS#.

REPRESENTATIVE RIPLEY asks, if HB 282 becomes law, would there be a grace period in which the state could address problems during that time without losing funding? **Mary Ann Welbanks** said she did not know what the time frame is.

REPRESENTATIVE FACEY asks if Wisconsin has an exemption now. **Mary Ann Welbanks** said Wisconsin has a small exemption, and it is only for their Amish population. This was due to the fact that Amish people don't have SS# and there is no legal requirement for people to get SS# if they don't have them. Alaska received an exemption based on the oil dividend payment that all their people get. This was because their situation is so unique, and it had a much broader database than the FWP. Not aware of any others.

CHAIRMAN FUCHS asks for a status update of where the states are on this before taking Executive Action. **Mary Ann Wellbanks** said, can get it from the Federal Government; stated every state is in compliance except Wyoming. Wyoming is already under penalty for system certification, so will get past this one and move on to the next. **CHAIRMAN FUCHS** asks how many states, whether they are in compliance or not, are challenging, or in the process of challenging, the Federal Government on this issue? **Mary Ann Wellbanks** said she did not have the information but can get it. **CHAIRMAN FUCHS** asked that the information be provided in writing. **Mary Ann Wellbanks** said she would do so in the next day or two.

REPRESENTATIVE DEVLIN asked if Wyoming is still receiving funds. **Mary Ann Wellbanks** answered, she believes they are still receiving funds, as the Federal Government has not cited them for this specific thing yet.

Closing by Sponsor:

REPRESENTATIVE LASZLOFFY said we should not overlook the fact that we have law enforcement in the room, a representative from the attorney general's office, and detectives that deal with identity theft on a daily basis. We heard reference made to the number of delinquent parents with regard to child support payments; 5,000-20,000 parents are delinquent. With only three pieces of information, could get on the internet, get a credit card in your name with a false address, then max out the credit card before you knew your identity had been stolen. All that is needed is your name, your birth date, and your social security number. **REPRESENTATIVE LASZLOFFY** stated he already has the first two, and if you have purchased a hunting or fishing license, you have already given the third. You can protect yourselves and the people of Montana; urges DO PASS on HB 282.

Close Hearing on HB 282.**EXECUTIVE ACTION ON HB 264**

Motion: REP. RIPLEY moved that **AMENDMENT 02 TO HB 264 DO PASS.**

Discussion:

Legislative Staffer Doug Sternberg explains Amendment 02, **EXHIBIT (fih24a08)**, requested by **REPRESENTATIVE LASZLOFFY**. It will change the designation of the new language in the constitution from its original location in Article Nine to Article Two. It will change the section designation from Section Six of Article Nine to Section 36 of Article Two. **REPRESENTATIVE LASZLOFFY** stated that these amendments are not accomplishing what he had in mind when he had them drawn up. He is not going to move these amendments. End of discussion on Amendment 02.

Motion: REP. ROME moved that **AMENDMENT 03 TO HB 264 DO PASS.**

Discussion:

Legislative Staffer Doug Sternberg explains Amendment 03, **EXHIBIT (fih24a09)**, requested by **REPRESENTATIVE ROME**. The statement of legislative intent in Amendment 03 would not become part of the constitution, it would simply attach itself to the referendum on its way through the process. Amendments 1, 2, 4-7 address the other concern raised with regard to fish. Wherever the phrase "wild" fish is used, it would take out the adjective "wild".

REPRESENTATIVE CLARK asked if the WHEREAS language would be left behind once the Bill went into the Constitution, or does it accompany the Bill? **Legislative Staffer Doug Sternberg** said the preamble does not constitute part of the law and it would not go on the books in Article Nine as language that would be attached to the Constitution itself.

REPRESENTATIVE CLARK asked if the intent was just to give an idea of where we are coming from? **REPRESENTATIVE ROME** said that was the idea, so we know what the intent of the Bill is.

REPRESENTATIVE BALLYEAT stated, regarding the WHEREAS, there are two reasons to include them: 1) to establish legislative intent in case of a court case; and 2) the WHEREAS will stick with the referendum until it is voted on, and then they will be taken off. He asked, isn't that true, they will appear on the ballot?

Legislative Staffer Doug Sternberg answered, no, the ballot language is listed in new Section Two. The proponent and opponent are also invited to offer suggestions in the document prepared by the Secretary of State that accompanies each ballot measure. Not sure how far the WHEREAS language would accompany this material. It would not become part of the Constitutional language itself.

REPRESENTATIVE FACEY stated, concerned with the WHEREAS that states: "WHEREAS, the availability of wild animals to people for hunting, fishing, and trapping must take precedence over the availability of wild animals for nonhuman predators". Does that mean that the cougar loses out to the people? The cougar hunts the deer, and we hunt the deer, but in terms of our management, do we always win out? Concerned about things we don't consider critters, that we are going to hunt and fish. Each part of the food chain is real important, even some little shrimp in Flathead Lake. I don't like the idea that humans always win out. I.E., the mouse eating the grass, the hawk eating the mouse, and going on up the food chain, sometimes we come to a point where humans should have precedence over anything non-wild. Asks if this could be reworded. **REPRESENTATIVE ROME** answered, the purpose of this is, if we have a wolf problem, or a mountain lion problem, then man has a basic right to control. I would have a real problem amending that out. **REPRESENTATIVE CLARK** said, I have given this language some thought. The problem is, he has another bill having to do with prairie dogs, and there are certain situations that come up. Prairie dogs get shot and get "consumed" by humans. There are some situations where predators exist, such as with the black footed ferret, that we have to protect. Otherwise it ends up on the endangered species list and the Federal Government forces us to protect it. There will come a time when certain species could end up on that list, and we

will have a Constitution that says, it doesn't matter what happens, we have a species on that list, we have a constitutional right to shoot these unprotected species or these game animals. I realize a prairie dog is not a game animal, but it could apply to other species.

CHAIRMAN FUCHS asked **REPRESENTATIVE ROME** if he talked to **REPRESENTATIVE LEWIS** and was he okay with your amendments? **REPRESENTATIVE ROME** answered, **REPRESENTATIVE LEWIS** basically said he would leave it up to the committee.

REPRESENTATIVE GALLUS stated, it is rather arrogant of us to think that we could write this on a piece of paper and have any say as to what happens in the wild. Predators aren't going to care who has precedence or not.

REPRESENTATIVE BALLYEAT stated, this language is not going into the Constitution and will not be a problem down the road. It is merely to establish legislative intent in case there might be future court cases interpreting the language that is going into the Constitution. Language that does go into the Constitution is necessarily broad and to put this language as a Preamble is simply to put restriction on any future court cases that might take the broad language and make it mean something far beyond what we meant. It is more for our protection, rather than to make anything unworkable down the road. In my conversation with **REPRESENTATIVE LEWIS**, he said he was open to whatever we decided, but he would prefer that we attach this preamble.

Motion/Vote: REP. ROME moved that **AMENDMENT 03 TO HB 264 DO PASS**. Motion carried 11-9 with Gutsche, Shockley, Facey, Jent, Tramelli, Clark, Rice-Fritz, Gallus, and Golie voting No.

Legislative Staffer Doug Sternberg explains Amendment 04, **EXHIBIT**(fih24a10), stating it was requested by **REPRESENTATIVE CLARK**. This would insert some language, "the opportunity to". **REPRESENTATIVE CLARK**, stated as the bill is written, and when it becomes constitutional language, if we have a constitutional right to harvest, we won't need licenses anymore. Basically licenses are there to give you the opportunity to harvest. We're not granting anyone the constitutional right to go out and kill an animal; that is harvesting. We are giving the constitutional right to have the opportunity to go out and kill an animal. Otherwise a person will buy a license and say I have a constitutional right, so until this tag is filled, I'm going to keep hunting. That is the way I read it.

REPRESENTATIVE FACEY said he doesn't think we need this in our Constitution. I would like to vote for this amendment, even

though I don't think we need it, because it is important to our heritage. I do think with **REPRESENTATIVE CLARK's** language that this is one of those unintended consequence Bills where we might shoot ourselves in the foot, but I would feel better with this language in there. Would support the amendment.

Motion/Vote: REP. CLARK moved that **AMENDMENT 04 TO HB 264 DO PASS.** Motion carried 13-7 with Balyeat, Barrett, Shockley, Ripley, Rice, Thomas, and Fuchs voting no.

Motion: REP. RICE moved that **AMENDMENT 01 & 03 TO HB 264** which **REPRESENTATIVE LASZLOFFY** had withdrawn **DO PASS.**

Discussion:

Legislative Staffer Doug Sternberg stated, to clarify; on Amendment Six, looking at the 26402 version (exhibit 8), it would move the constitutional language into the Bill of Rights, rather than into the Environmental Section of the Constitution. In the process, it would also strike subsection two of the bill, lines 17 and 18. This is something that was pointed out to **REPRESENTATIVE LASZLOFFY.** If all we are talking about is the heritage right of Montanans to harvest game, Article Two is an appropriate place for an expression of that right. If we also include the language in sub two which goes beyond the right and describes the management prerogative for the wildlife, those types of directives would most appropriately be placed in Article Nine. With the Bill as drafted and the language as it is with sub one and sub two, it is appropriate to place it in Article Nine. If we want to simply state a right of Montanans to harvest game, it could appropriately be placed in Article Two. That is why the language in Amendment Six is there.

REPRESENTATIVE RICE, stated she wants to exclude 1, 3, and 5 out of Amendment 02 and moves a DO PASS on the remainder of 02.

REPRESENTATIVE CLARK asks why the amendments were included as one package to begin with, and what is your perception of separating out the section, going from nine to two and leaving in the language in sub two, which is the reason we have it in nine to begin with? **REPRESENTATIVE LASZLOFFY** said he wanted the Amendment moved from Article Nine to Article Two because he sees it as more of a right than part of the environmental concern of the rest of the constitution. He said that **Doug Sternberg** told him it isn't appropriate to have the environmental language that is tacked onto the rest of the amendment in Article Two.

REPRESENTATIVE LASZLOFFY said he didn't see the language in Section six, Sub two of the Amendment as being necessary. But it is, so that is the reason the Amendments weren't moved.

REPRESENTATIVE CLARK stated that he agreed. If we are going to do the Amendment, the Amendment all goes together. If we are going to move this to Article Two, we should include #6 of the Amendments. If not, we should leave it to Article Nine.

REPRESENTATIVE BALLYEAT said, to give clarification to this. The court has ruled in the CI 75 court case that we cannot have a referendum that addresses two separate articles of the Montana Constitution at once, so we cannot move just the first half of 264 into Article 02. We either have to leave it in Article Nine or we have to strike the second half of HB 264, so that we only leave language that can be moved over into Article Two. This is why **REPRESENTATIVE LASZLOFFY** decided that we are better off having the whole HB 264 language in Article Nine, rather than having only half of it in Article Two.

REPRESENTATIVE RICE stated she would withdraw her Amendment.

REPRESENTATIVE CLARK asks the committee to look at the Amendment in their folder proposed by FWP dated 1/15/01 **EXHIBIT(fih24a11)**, which was included in Chris Smith's testimony on HB 264 on 1/16/01. Wants to move only part three of the Amendment, at the end of Sub Two, "to the extent consistent with the conservation of fish and wildlife". Once again, we have an issue of looking at the big picture. We should be able to hunt animals, but we need to look at other populations of animals that might depend on those animals. We manage the big picture well in Montana, and we are always looking for ways for FWP to manage it better. Including the section where we manage the species for the preservation of that species and other species that might depend on those species is critical in our Constitution.

Motion: **REP. CLARK** moved to insert "to the extent consistent with the conservation of fish and wildlife", the third portion of FWP AMENDMENT TO **HB 264 DO PASS**.

Discussion:

REPRESENTATIVE LASZLOFFY stated, it is in the vested interest of both hunters/fishermen and FWP to make sure we take into the account the conservation of the species whenever we act in a management role toward fish and wildlife. Concerned that we may be setting up a legal foothold for people who don't want us to hunt, to be able to challenge this. They might be able to say that we are not looking after the conservation of the species. Doesn't want a foothold put in here that will undermine the goal of the constitutional amendment itself. Believes that FWP will look after the species with regards to conserving the species. It

is in their best interest, and in the best interest of the hunters and fishermen also. Would oppose this.

REPRESENTATIVE BALLYEAT stated he would oppose this amendment also. As stated, in Article Nine of the Constitution there is already language dealing with conservation. Doesn't think we need to add anything more. Don't need to dilute what we are doing here, which is to put language in dealing with the right to harvest game.

Motion/Vote: REP. CLARK moved that **FWP AMENDMENT TO HB 264 DO PASS. Motion failed 4-16.**

REPRESENTATIVE FACEY stated would like to move **REPRESENTATIVE LASZLOFFY's** amendments for the following reason. He owns cows, has a hayfield, has deer and elk chewing up the hayfield. Lines 18 and 19 say FWP can't go out there and manage those deer. It says here, we have to manage to preserve my right to hunt. It says in the Code, if something is chewing up on your property, FWP has to respond within 48 hours to your concern. If you are a cattle rancher and you're providing dinner for numerous cows and elk, this says you can't do anything about it. Think about the unintended consequences. It says, "states will manage fish and wildlife to preserve opportunities to hunt and fish". If you are killing my deer and elk, you are limiting my opportunity to hunt and fish. The reason we want this in our Constitution is so we can hunt and fish, and I think this might muddy the waters for us.

REPRESENTATIVE BALLYEAT said he opposes the amendment. If you take **REPRESENTATIVE FACEY's** logic to a conclusion, then they will have to shut down driving because they don't want cars hitting any deer. This language does not say they have to preserve every game animal in Montana, it simply says we have a constitutional right to the harvest of wild game and fish and I think you are way over reaching to try to make it say something that will divide landowners and hunters, because it doesn't say that by any stretch.

REPRESENTATIVE BALES said he also feels it raises some questions as to the interpretation, if this gets into the Constitution. As we look at this, we need to look at the worst case scenario. In the past I have seen courts do exactly the opposite of what I think they should do. Would say that **REPRESENTATIVE FACEY** has a good point here, it could be construed that taking game for depredation damage would be limiting the opportunities for harvest of wild game.

CHAIRMAN FUCHS stated he will make a chairman's decision. We haven't done any favors to **REPRESENTATIVE LEWIS** with his Bill. I am going to postpone this and put it in a subcommittee with **REPRESENTATIVES CLARK, BALLYEAT, BALES** and **FACEY**. Will postpone the hearing. We have two amendments passed on this.

REPRESENTATIVE THOMAS said he thinks this is opening a bucket of worms. Every time we give a group a constitutional right, we are on the other hand saying if you don't have a constitutional right then your activity is in jeopardy. He is strongly opposed for that reason. This is basically a bad situation we are getting ourselves into.

Substitute Motion/Vote: **REP. RIPLEY** made a substitute motion that **HB 264 BE TABLED**. Substitute motion carried 12-8 with Ballyeat, Laszloffy, Shockley, Clark, Rice, Gallus, Rome, and Fuchs voting no.

Postponed HB 306 until Thursday.

ADJOURNMENT

Adjournment: 5:20 P.M.

REP. DANIEL FUCHS, Chairman

LINDA KEIM, Secretary

DF/LK

EXHIBIT (fih24aad)